

96 0072414 S (Conn. Super.). The case was litigated separately from the other cases brought by other states. Connecticut recovered approximately \$3.6 billion (excluding interest) as part of a nationwide settlement in 1998. Although Connecticut eventually joined the national settlement, the particular contributions of its counsel were recognized by being awarded the fifth largest compensation award among the states from the fifty states' Strategic Contribution Fund.

Other representative litigation on behalf of state entities in which the Berger firm has recently been involved include:

- Currently represents the cities of Philadelphia and Chicago in suits seeking payment of certain taxes by internet travel and hotel accommodation companies. *City of Philadelphia v. Hotels.com GP, LLC, et al.*, C.C.P. Phila. Cty., July Term, 2005; *City of Chicago v. Hotels.com GP, LLC, et al.*, No. 05L051003 (Cir. Ct. Cook Cty. (Ill.)).
- Formerly represented the County of Camden, New Jersey, in public nuisance litigation brought in federal court against certain handgun manufacturers and distributors. *Camden Co. Bd. of Chosen Freeholders v. Beretta*, 273 F.3d 536 (3d Cir. 2001).

Berger & Montague's Expertise In Other Practice Areas. The firm has a broad range of other relevant expertise in complex litigation in the practice areas of consumer protection, antitrust litigation and environmental and mass torts. Berger & Montague's extensive experience in complex litigation would further strengthen the firm's ability to assist the Client.

The firm has an active consumer litigation practice which seeks recourse on behalf of consumers who have been the victims of fraudulent conduct, unfair business practices, and faulty products. Berger & Montague has been involved in some of the country's most prominent consumer cases advocating for aggrieved consumers, including, among other cases, litigation against the manufacturers of the unsafe diet drug pills known as Fen-phen, which achieved a substantial settlement for the classes the firm represented.

The firm is currently pursuing litigation against Enterprise Rent-A-Car for the fraudulent and deceptive selling of insurance, against the Chicago and Philadelphia Housing Authorities for housing stock allegedly contaminated with peeling and flaking lead-based paint, against credit bureaus for selling information about individuals to a variety of buyers, as well as several other prominent cases. The Berger firm is also currently representing consumers in *In re TJX Companies Retail Security Breach Litig.* (D. Mass.), in a proposed class action alleging that TJX violated state law for a data breach caused by a computer "hacker." As a result of TJX's failure to protect its data, customer information was stolen from TJX's computer network that handles a wide range of financial information for millions of customers, including credit cards, debit cards linked to checking accounts and transactions for returned merchandise. A proposed settlement

of this litigation has been reached subject to court approval which provides credit monitoring, identity theft insurance, reimbursement of certain costs attributable to identity theft and other relief. The firm has also filed claims against Coca-Cola and Nestlé on behalf of a group of consumers, alleging breach of express and implied warranties and state consumer protection statutes for the marketing of the drink “Enviga.” *Melfi v. Coca-Cola, et al.*, Civ. No. 1:07-cv-828 (D.N.J.).

Since its inception, the Berger firm’s antitrust department has represented purchasers and consumers in most of the largest price-fixing and monopolization cases in the United States. In recent years, this practice group has played a leading role in successfully prosecuting civil antitrust cases involving anticompetitive practices in, among other areas, the prescription drug, medical device, infant formula, and credit card industries. The *Infant Formula Antitrust Litigation* involved a recovery of \$125 million, and the *Brand Name Prescription Drug Antitrust Litigation* involved a recovery of more than \$717 million. Currently, the firm is involved in a series of class actions against drug manufacturers and others charging the suppression of generic competition. Four of these cases have successfully been resolved during the last five years for aggregate recoveries well in excess of \$600 million.

In three separate currently pending lawsuits, the Berger firm serves as lead or co-lead counsel for credit card consumers alleging violations of antitrust laws. In *In re Currency Conversion Fee Antitrust Litig.* (MDL 1409 (S.D.N.Y., Pauley, J.)), discussed above, the complaint alleges violations of antitrust laws, as well as violations of the Truth in Lending Act and violation of state consumer protection statutes for failure to disclose transaction fees. The parties reached a \$336 million settlement which has been preliminarily approved. The firm also represents classes of credit card consumers alleging antitrust violations in *Ross and Wachsmuth v. American Express Co., et al.*, 04-cv-5723, a related case in MDL 1409 (S.D.N.Y., Pauley, J.), and *Ross, et al. v. Bank of American, et al.*, 05-cv-7116, a related case in MDL 1409 (S.D.N.Y., Pauley, J.) (on appeal).

The firm’s environmental and mass torts practice areas have also been active in representing both state and non-state entities in complex class action litigation. In addition to the firm’s representation of the Connecticut AG in the tobacco litigation described above, the firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill Litigation* in Anchorage, Alaska, which resulted in a record punitive damages jury award of \$5 billion against Exxon, which presently remains on appeal.

The firm more recently (in February 2006) won a \$554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium and other toxins from the Rocky Flats (Colo.) Nuclear weapons facility, with the proceedings in that case still continuing. This represents the largest jury verdict ever in a property damage class action. The verdict was also the third largest jury verdict of 2006, according to *The National Law Journal*. The Berger & Montague trial team, which was led by Berger firm senior shareholder Merrill G.

Davidoff, was one of the seven finalist for the 2006 “Trial Lawyer of the Year” award from the non-profit foundation Trial Lawyers for Public Justice.

Expertise in Handling Significant Document Review. The Berger firm frequently manages massive document productions and routinely undertakes the review of literally millions of pages of documents in many types of complex commercial cases. For example, millions of pages of documents were produced in many of the firm’s celebrated recent cases, including *Foreign Currency* (antitrust), *Exxon Valdez* (consumer/environmental) and *AOL* (securities), to name just three such cases.

The Berger firm has considerable experience and technical proficiency in managing large document productions, and has worked with many types of computer databases in connection therewith, individually and in coordination with other parties. For example, in the *AOL* securities opt-out case where the Berger firm represented the Pennsylvania AG and four large state funds, the Berger firm coordinated with counsel for two other state opt-out plaintiffs (New Jersey and Alaska) to establish a “common” document database and allocate the review of literally millions of pages of documents produced by AOL, Time Warner and other defendants, all of which saved the firm’s clients considerable time and expense.

The Berger & Montague IT department is unusual in that it both develops document review and management systems, as well as deploys and maintains products from third party vendors. Accordingly, the firm is able to handle even the most massive document productions, typically without contracting functions out to any third parties. The firm can develop tools to handle new data formats and can scan millions of pages and extract data from them as necessary. Other firms typically have more limited capacities, as they can only do what the specific tools they have purchased from third parties allow them to do. By contrast, the Berger firm has experience not only setting up an https web server but actually has written an https web server and database engine ‘extensions.’

In fact, the IT department of Berger & Montague has vast experience dealing with database technologies, internet and application security, training, and associated support. Team members have presented papers at database and data mining conferences, have written extensively on data security and encryption, and have published articles dealing with database implementations. They are also expert in developing and deploying web and native applications (both server and client side). Berger & Montague has deployed its own proprietary litigation support system internally that has been developed and maintained by the IT department, and various external parties have used this system for document review. The IT department is also flexible and can deploy and manage any other system (Concordance, etc.) that might be required to satisfy specific requirements.

The litigation support system currently in use at Berger & Montague can handle cases that contain Terabytes of data (it currently has over 30 cases loaded and in use). It provides a

variety of tools that ensure the data loaded into the system is consistent and correct (so all images have matching OCR text, coding is present for all documents, all images are valid, etc.), thus ensuring as high a quality assurance that can be obtained. These tools can also be used to examine data that comes from other systems, and the IT department has the expertise to analyze data in any format, and to expand the quality assurance capabilities to handle any new format. Thus, quality assurance is maximized by the Berger & Montague IT department (from design, to low and high level implementation, to deployment, to maintenance).

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Tab 1

Berger & Montague, P.C.



Daniel Berger, Shareholder
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Daniel Berger is presently a senior shareholder of the firm and serves as a Managing Shareholder. Over the last 25 years, he has been involved in complicated commercial litigation including class action securities, antitrust, and bankruptcy cases. In addition, he has prosecuted several important environmental, mass tort and civil rights cases during this period. He currently leads the firm's practice involving the pharmaceutical and medical device industries. He co-chairs the firm's Antitrust Department and leads the firm's employment discrimination practice group. Approximately 20% of his time has been devoted to securities litigation in the most recent five-year period.

In securities litigation, Mr. Berger has frequently represented public institutional investors, including the state pension funds of Pennsylvania and New Jersey in both individual and class action litigation. He led his firm's efforts on behalf of the City of Philadelphia in the Ikon Office Solutions class action, resulting in a recovery of \$111 million. He has also litigated securities opt-out cases, obtaining large premiums over class recoveries, including on behalf of the state pension funds of the Commonwealth of Pennsylvania in the AOL/Time Warner litigation.

Mr. Berger graduated with honors from Princeton University and Columbia Law School, where he was a Harlan Fiske Stone academic scholar. He also had done graduate studies in applied micro-economics and macro-economic theory, the business cycle and economic history. He has published law review articles in the Yale Law Journal, the Duke University Journal of Law and Contemporary Problems, the University of San Francisco Law Review and the New York Law School Law Review and has worked with the American Law Institute/American Bar Association program on continuing legal education. He has been affiliated with the Kennedy School of Government through the Shorenstein Center of Media and Public Policy at Harvard University.

Mr. Berger has been active in city government in Philadelphia and was a member of the Mayor's Cultural Advisory Council, advising the Mayor of Philadelphia on arts policy, and the Philadelphia Cultural Fund which was responsible for all City grants to arts organizations. Mr. Berger was also a member of the Pennsylvania Humanities Council, one of the State organizations through which the National Endowment for the Humanities makes grants.

Berger & Montague, P.C.



Merrill G. Davidoff, Shareholder
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Merrill G. Davidoff, a senior Shareholder in the firm, received a B.A. degree from the University of Pennsylvania in 1969, and a J.D. from the University of Pennsylvania Law School (cum laude) in 1973. He is admitted to practice law in Pennsylvania, New York, the United States Supreme Court, and numerous federal Courts of Appeal. Mr. Davidoff is Co-Chair of the Antitrust Department with Messrs. Berger and Montague, chairs the Environmental Group, and has litigated and tried a wide range of securities, antitrust, and environmental class actions. In recent years, because of his leadership in protracted litigation in other matters referred to below, he has devoted less than 10% of his time to securities matters.

Mr. Davidoff was lead counsel in the Revco Securities Litigation, an innovative "junk bond" class action, which settled for \$36 million. Mr. Davidoff was lead plaintiffs' counsel and lead trial counsel in the Melridge Securities Litigation, tried to jury verdicts for \$88 million (securities fraud) and \$240 million (RICO). He was one of co-lead counsel in the Ikon Office Solutions Securities Litigation, in which a settlement of \$111 million was obtained. He was co-lead counsel and designated lead trial counsel in the Sunbeam Securities Litigation, where settlements of \$142 million were reached.

In the Rocky Flats Nuclear Weapons Plant class action where Mr. Davidoff is currently lead counsel, the Court held the United States Department of Energy in contempt of court after a one-week trial in November 1995 (reported at 907 F. Supp. 1460 (D. Colo. 1995)). In 2005-2006, this class action finally went to trial (with Mr. Davidoff as lead trial counsel) and, in February 2006, the jury returned a special verdict for the plaintiffs for \$554 million, the largest property damage class action jury verdict ever. The verdict was the third-largest jury verdict of 2006 in the United States, according to The National Law Journal. The Rocky Flats trial team led by Mr. Davidoff was also one of seven finalists for the 2006 "Trial Lawyer of the Year" award from the non-profit foundation Trial Lawyers for Public Justice.

In *In re Foreign Currency Fee Antitrust Litigation*, MDL No. 1409, where Mr. Davidoff is a co-lead counsel, a proposed class action settlement of \$336 million with Visa, MasterCard, and a number of their member banks was recently announced.

In In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL No. 1720, one of the largest pending antitrust cases in the United States, Messrs. Montague and Davidoff are among Court-appointed co-lead counsel.

During a legal career spanning 33 years, Mr. Davidoff has represented diverse clients, including the State of New Jersey, the City of Philadelphia, many large and small companies, sports teams, professional organizations, individuals and professional firms. Mr. Davidoff has been a speaker at American Trial Lawyers Association meetings and seminars, and has addressed the Environmental and Toxic Torts Section at the National Convention of ATLA. He is also a member of the Antitrust and Business Law Sections of the American Bar Association, and served on the subcommittee of the American Bar Association Antitrust Section which prepared the 1985 supplement to the "Antitrust Civil Jury Instructions."

Berger & Montague, P.C.



Sherrie R. Savett, Shareholder
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Sherrie R. Savett is a graduate of the University of Pennsylvania (B.A. 1970, summa cum laude with distinction in English; J.D. 1973) and a member of Phi Beta Kappa. She is a managing principal and shareholder of Berger & Montague as well as Chair of the firm's Securities Litigation Department, supervising more than 25 lawyers.

Ms. Savett is admitted to practice law in the Commonwealth of Pennsylvania and in numerous federal courts throughout the country.

Ms. Savett has lectured at the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions. Ms. Savett has frequently been a panelist on various American Bar Association, Practising Law Institute ("PLI"), and Pennsylvania and Philadelphia Bar Associations panels concerning securities class action litigation and the use of class actions in consumer litigation. She is the author of several papers on various aspects of securities and complex litigation. Her writings include: "The Merits Matter Most and Observations on a Changing Landscape Under the Private Securities Litigation Reform Act of 1995," 39 Arizona Law Review 525 (1997); "Everything David Needs to Know to Battle Goliath," American Bar Association, The Brief, Tort & Insurance Practice Section, Spring 1991, Vol. 20, No.3; "Prosecution of Derivative Actions: A Plaintiff's Perspective"; "The Derivative Action: An Important Shareholder Vehicle for Insuring Corporate Accountability in Jeopardy"; "Preventing Financial Fraud"; Shareholder Class Actions in the Post-Reform Act Era"; and "Securities Class Actions Since the 1995 Reform Act: A Plaintiff's Perspective." (Published either by the Practising Law Institute or American Bar Association).

In the March 1999 issue of Philadelphia Magazine, Ms. Savett was named as one of the best lawyers in the Philadelphia region based on a 4,000 lawyer survey.

Ms. Savett has served as lead counsel or as a member of the Executive Committee in a large number of important securities class actions in federal and state courts throughout the country. These include the great majority of the class actions listed under paragraph III. A.a.i and d.i above.

Ms. Savett has established several significant precedents in her 25 years of practice. Among them is *Sonnenfeld v. City & County of Denver*, 100 F.3d 744(10th Cir. 1996), the municipal securities case cited above, in III. A. a. ii. In the U.S. Bioscience

securities class action, a biotechnology case where critical discovery was needed from the federal Food and Drug Administration, the court ruled that the FDA may not automatically assert its administrative privilege to block a subpoena and it may be subject to discovery depending on the facts of the case. (*In re U.S. Bioscience Securities Litigation*, 150 F.R.D. 80 (E.D. Pa. 1993)). She litigated a seminal consumer class action in New Jersey state court where she obtained an appellate court decision, *Delgozzo v. Kenny*, 266 N.J. Super. 169, 628 A.2d 1080 (1993), setting forth the standard for establishing a consumer class action in New Jersey.

Ms. Savett has been active in community affairs. Among other directorships in the charitable and civic sector, she is a member of the Board of Trustees of the Philadelphia Bar Foundation.

Berger & Montague, P.C.



Todd S. Collins, Shareholder
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Todd S. Collins is a graduate of the University of Pennsylvania (B.A. 1973) and the University of Pennsylvania Law School (J.D. 1978). He is a member of the Pennsylvania and Delaware Bars. Since joining Berger & Montague in 1982, following litigation and corporate experience in Wilmington, Delaware and Philadelphia, he has concentrated on complex class litigation, including cases on behalf of securities purchasers, shareholders, trust beneficiaries, and retirement plan participants and beneficiaries. Mr. Collins has served as lead counsel or co-lead counsel in numerous cases that have achieved significant benefits on behalf of the Class. These cases include: *In re Aero Systems, Inc. Securities Litigation*, Case No. 90-0083-CIV-PAINE (S.D. Fla.) (settlement equal to 90 percent or more of Class members' estimated damages); *Price v. Wilmington Trust Company*, Case No. 12476, (Del. Ch.) (in litigation against bank trustee for breach of fiduciary duty, settlement equal to 70% of the losses of the Class of trust beneficiaries); *In re Telematics International, Inc. Securities Litigation*, Case No. 89-6015-CIV-PAINE (S.D. Fla.) (settlements achieved, after extensive litigation, following 11th Circuit reversal of dismissal below); *In re Ex-Cell-O Securities Litigation*, Case Nos. 86CV 73442 DT and 86 CV 75335 DT (E.D. Mich.); *In re Sequoia Systems, Inc.* Case No. 92-11431-WD (D. Mass.); *In re Sapiens International, Inc. Securities Litigation*, Case No. 94 Civ. 3315 (RPP) (S.D. N.Y.); *In re Datastream Securities Litigation*, Case No. 9-99-0088-13 (D.S.C.); *Copland v. Tolson*, Case No. 93008366-09-5 (C.P. Bucks County, Pa.) (on eve of trial, in case against corporate principals for breach of fiduciary duty, settlement reached that represented 65% or more of claimants' losses, with settlement funded entirely from individual defendants' personal funds); and *In re IKON Office Solutions, Inc. Securities Litigation*, Case No. 98-CV-5483 (E.D. Pa.).

Berger & Montague, P.C.



Gary Cantor, Shareholder
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Gary E. Cantor is a graduate of Rutgers College (B.A. with high honors 1974) where he was a member of Phi Beta Kappa, and the University of Pennsylvania Law School (J.D. 1977), where he was a member of the Moot Court Board and the author of a law review comment on computer-generated evidence. He was admitted to the Pennsylvania bar in 1977.

Since joining Berger & Montague in 1977, he has concentrated more than 90% of his work on complex litigation, particularly securities litigation and securities valuations. Among other cases, Mr. Cantor has served as co-lead counsel in *Steiner v. Phillips, et al.* (Southmark Securities), Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), which resulted in several payments to the Settlement Fund of \$82.5 million, and *In re Kenbee Limited Partnerships Litigation*, Civil Action No. 91-2174 (GEB), a class action involving 119 separate limited partnerships resulting in cash settlement and debt restructuring with as much as \$100 million in wrap mortgage reductions). In addition, he played a major role in: *In re Marconi, Plc, Securities Litigation*, Civil Action No. 2:01-CV-1259 (W.D. Pa.) (\$7.1 million settlement approved January 16, 2004); *In re Sotheby's Holding, Inc. Securities Litigation*, No. 00 Civ. 1041(DLC) (S.D.N.Y.) (\$70 million class settlement); *In re Fidelity/Micron Securities Litigation*, Civil Action No. 95-12676-RGS (D. Mass.) (\$10 million class settlement); *In re Tucson Electric Power Company Securities Litigation*, C.A. No. 89-1274 PHX (WPC) (C.D. Ariz.) (\$30 million settlement of class and derivative actions). He was also actively involved in the *Waste Management Securities Litigation* (class settlement of \$220 million).

Berger & Montague, P.C.



Robin Switzenbaum, Shareholder
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Robin Blumenfeld Switzenbaum is a graduate of Barnard College (B.A. cum laude 1976) and the University of Pennsylvania Law School (J.D. 1985). Before law school, Ms. Switzenbaum was engaged in the development of commercial and residential real estate in Pennsylvania and New Jersey. During that time, Ms. Switzenbaum served on the board of directors of the Home Owners Warranty Counsel for Southeastern Pennsylvania and the Home Builders Association for Montgomery and Bucks Counties. Before becoming Of Counsel to Berger & Montague in October, 1989, Ms. Switzenbaum was an associate with the Philadelphia firm of Saul, Ewing, Remick & Saul specializing in real estate. Since joining Berger & Montague, Ms. Switzenbaum has concentrated in complex civil litigation, including securities and real estate. Securities litigation currently accounts for more than 80% of her caseload. She is a member of the bar in Pennsylvania, New Jersey, Florida, and California and an arbitrator with the New York Stock Exchange. Ms. Switzenbaum also serves as a volunteer guide at the Philadelphia Museum of Art.